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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

JENNIFER S.,

Petitioner,

v.

THE SUPERIOR COURT OF LOS
ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Real Party in Interest.

B196739

(Los Angeles County
Super. Ct. No. CK59691)

ORIGINAL PROCEEDING; petition for extraordinary writ. Marilyn H. Mackel,
Commissioner. Denied.

Law Offices of Katherine Anderson and Victoria Doherty for Petitioner.

Raymond G. Fortner, Jr., County Counsel, and Frank J. Da Vanzo, Principal
Deputy County Counsel, for Real Party in Interest.

Children's Law Center of Los Angeles and Jasminde Deol for Minor.

INTRODUCTION

Jennifer S. petitions this court for an extraordinary writ (Cal. Rules of Court, rule 8.452) setting aside the juvenile court's order pursuant to Welfare and Institutions Code section 366.22¹ setting a permanent plan hearing (§ 366.26). She contends there is insufficient evidence to support the juvenile court's finding of substantial risk of detriment if her minor son, Joel H., were to be returned to her. We disagree and deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

Joel was born prematurely in May 2005, weighing only 3 pounds, three ounces. Both he and 26-year-old Jennifer had cocaine in their systems. Joel remained in the neonatal intensive care unit for three weeks.

Jennifer told a children's social worker (CSW) for the Department of Children and Family Services (DCFS) that she began using alcohol when she was 11 or 12 years old and cocaine and other drugs when she was 14 or 15 years old. Jennifer claimed that she stopped using drugs and alcohol when she was 18 years old, but she began using drugs again when she was pregnant because she was under stress.

Jennifer stated that she was on probation, which she was scheduled to complete in December 2006.² She was attending anger management and Alcoholics Anonymous programs in conjunction with her probation. The CSW gave Jennifer referrals for drug treatment and parenting classes.

¹ Unless otherwise stated, all further section references are to the Welfare and Institutions Code.

² Jennifer was convicted of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)) in 2003.

Jennifer identified Jose H. as Joel's father. She said that he was in custody for domestic violence and criminal threats against the mother of another one of his children.³ Jennifer also requested that Joel be placed with her mother, Gloria G. Although Jennifer did not have a good relationship with her mother, Gloria G. was willing to take custody of Joel.

In mid-June 2005, Jennifer began drug testing and tested negative. Joel was released from the hospital and detained.

At the June 22, 2005 detention hearing, the juvenile court found a prima facie case for detention and ordered Joel detained in shelter care. It ordered DCFS to provide Jennifer with referrals for parenting, drug and alcohol programs, with random drug testing and individual counseling. It granted Jennifer and other relatives monitored visitation.

In a subsequent interview, Jennifer told the CSW about sexual abuse by an uncle when she was a child, running away from home at a young age, her drug abuse, and her criminal history. She reiterated that she was attending Alcoholics Anonymous meetings and anger management classes in conjunction with her probation. She was attending the Homeless Outreach Program for parent education, domestic violence, alcohol/drug and individual counseling. She was living with her father in a two-bedroom house.

Jennifer had been visiting with Joel six hours every day, with Gloria G. acting as monitor. During visitation, she was loving and provided Joel with appropriate care.

At the June 28, 2005 jurisdictional hearing, Jennifer and Gloria G. were present. The juvenile court sustained the allegations of the section 300 petition. The court ordered DCFS to make a recommendation as to whether Jennifer should be allowed to reside or have overnight visits with Joel should he be placed with Gloria G.

At the August 25, 2005 dispositional hearing, the juvenile court ordered Joel placed with Gloria G. DCFS recommended that Jennifer not be allowed to live with them

³ Jose H. later was located and declined to participate in the proceedings. He is not a party to this action.

due to her past turbulent relationship with her mother. The court permitted Jennifer to have overnight visits in Gloria G.'s home, however, provided she was in compliance with her case plan. The court also ordered Jennifer to attend a drug rehabilitation program with random drug and alcohol testing, parent education, and individual counseling to address anger management, domestic violence and past sexual abuse.

For the six-month review hearing, DCFS reported that Jennifer was still living with her father, and she had obtained employment. She was participating in a drug program and had been consistently testing negative. She was having overnight weekend visitation with Joel at Gloria G.'s house, caring for Joel, and they were bonded to one another.

At the March 7, 2006 hearing, the court granted Jennifer six more months of reunification services. It also ordered unmonitored visitation. It gave DCFS discretion to liberalize visitation and to allow Jennifer to move into Gloria G.'s house.

For the 12-month review hearing, DCFS reported that while Jennifer had completed her parenting program, her participation in drug treatment had become inconsistent. Jennifer explained that she had been hospitalized and needed to reenroll in the program. After reenrolling, however, she had not attended the program. She nonetheless continued to test negative for drugs. Due to Jennifer's failure to attend her program on a regular basis, DCFS had changed her visitation to monitored.

Gloria G. had reported an incident occurring on June 12, 2006. A friend called to tell her that Jennifer had gotten into an argument with her father. Jennifer was cursing at her father and calling him names; she smelled of alcohol. Jennifer then came to Gloria G.'s house. Gloria G. suspected Jennifer had been drinking and told her she could not visit Joel unless the visit was monitored to ensure that she was sober. In response, Jennifer threatened to break Gloria G.'s windows. Jennifer denied the incident and claimed that Gloria G. was upset because Jennifer stopped paying her for Joel due to financial difficulties.

At the August 29, 2006 hearing, Jennifer denied drinking, claiming that it was her father who had been drinking. She denied threatening to break Gloria G.'s windows.

The juvenile court gave DCFS discretion to allow Jennifer to move in with Gloria G. It set a section 366.22 permanent plan hearing for December 21, 2006.

DCFS reported in December 2006 that Jennifer had successfully completed probation, and it was terminated on December 9. She continued to test negative for drugs. She also had enrolled in vocational school. However, Jennifer was inconsistent in her attendance at court-ordered programs. She would enroll in a program a month before a scheduled court hearing then discontinue attendance after the hearing. Due to Jennifer's failure to attend her programs, DCFS once again changed her visitation to monitored.

On December 21, 2006, Jennifer requested a contested hearing. The court continued the permanent plan hearing to February 2007. For the hearing, DCFS reported that Jennifer had continued to test negative for drugs. She began anger management classes in November 2006, and she began individual counseling on January 27, 2007.

Gloria G. had expressed concern for Joel's safety if he were returned to Jennifer, in that Jennifer was still living with her father, who abused alcohol. Gloria related that three weeks earlier, Jennifer became involved in an altercation with her boyfriend, who possibly was living with her, and Jennifer's father became involved. Gloria indicated a willingness to adopt Joel. Jennifer denied that her boyfriend was living with her.

At the contested hearing on February 6, 2007, Jennifer and Gloria G. were present, but neither testified. After hearing argument, the juvenile court noted that Jennifer was in substantial compliance with her case plan. While Jennifer had just begun individual counseling, she was dealing with "life long issues" for which she would need counseling "for at least a substantial period of time and that is not a reason not to return the child to her care and custody."

The court noted, however, that "[t]he real issue is one of housing." That issue was "not anywhere near to being resolved." Where Jennifer was living was "absolutely not appropriate," and Joel could not be returned to her safely while she remained living with her father.

The court therefore found by clear and convincing evidence that Joel would be at substantial risk of detriment if he were returned to Jennifer's care and custody. It noted that Jennifer needed to continue her individual counseling and visitation with Joel, and she should look for a place to live where she could care for Joel. If she found one, she could file a section 388 petition and "the court can reconsider this matter and perhaps place the child with her." The court then set the case for a section 366.26 selection and implementation hearing.

DISCUSSION

Where a petitioner challenges a finding that return of a child to her custody would create a substantial risk of detriment, the question is whether substantial evidence supports the finding. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.) In resolving this question, we view the evidence in the light most favorable to the trial court's determination, drawing all reasonable inferences in favor of the determination. (Cf. *In re Ronell A.* (1995) 44 Cal.App.4th 1352, 1361; *In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) Substantial evidence is that which is reasonable in nature, credible, and of solid value. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705.)

Jennifer contends there is no substantial evidence that her housing situation created a substantial risk of detriment if Joel were returned to her. The only evidence that Jennifer's father, with whom she lived, had a problem with alcohol abuse was statements by Gloria G., "who lived separate and apart from [Jennifer's father] and who had [Joel] placed with her since before the disposition hearing in 2006."

In essence, Jennifer is claiming that Gloria G.'s statements could not constitute substantial evidence, in that Gloria may have been biased and had a motive to lie. While bias and motive to lie are factors to consider in determining witness credibility, they do not preclude a finding that the witness's testimony constitutes substantial evidence. (Evid. Code, § 780; *Evje v. City Title Ins. Co.* (1953) 120 Cal.App.2d 488, 492.) The

juvenile court found her statements to be credible, and we have no basis to reject that finding. (*Constance K. v. Superior Court, supra*, 61 Cal.App.4th at p. 705.)

Moreover, as the People point out, Jennifer herself corroborated Gloria G.'s statements. At the August 29, 2006 hearing, the juvenile court questioned Jennifer regarding her argument with her father. Jennifer stated that she was not drinking. She added, "My dad was drinking. All of my tests are clean."

The petition for extraordinary writ is denied.

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SPENCER, P. J.

We concur:

MALLANO, J.

ROTHSCHILD, J.